

Office of Chief Counsel

M E M O R A N D U M

CC:SB:3:NAS-GL-115149-01
RDHarris

APR 25 2001

date:

to: Technical Support Manager (Area 8)
Attn: Technical Support Group 16 Coll

from: Associate Area Counsel (SB/SE Area 3 - Nashville)

subject: Advisory Opinion - [REDACTED] - Form 2848 Issues

ISSUES

1. Is a Form 2848 which contains a stamped signature for the representative a valid Form 2848?
2. Is a Form 2848 which changes the name of the representative by altering the Form 2848 after it has been executed by the taxpayer a valid Form 2848?
3. What are the requirements for substituting or delegating to a representative when the Form 2848 specifically permits substitution and delegation?

CONCLUSIONS

1. No, we do not believe a Form 2848 which contains a stamped signature for the representative is a valid Form 2848 for that representative.
2. No, unless the original representative complies with the requirements for substitution of a representative as set forth in Treas. Reg. § 601.505(b)(2), we do not believe a Form 2848 which changes the name of the representative by altering the Form 2848 after it has been executed by the taxpayer is a valid Form 2848.

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3. Before the representative appointed in the Form 2848 can substitute or delegate, he/she must file a Notice of Substitution or Delegation and the new representative must file the written declaration required by Treas. Reg. § 601.502(c).

FACTS

This memorandum responds to your request for assistance dated March 13, 2001 and received in this office on March 15, 2001. This memorandum should not be cited as precedent. Your March 13, 2001 memorandum attaches a February 27, 2001 memorandum from Revenue Officer Claire Coffey which outlines several fact situations which your office regularly encounters with Forms 2848 naming an employee of [REDACTED] as the taxpayer's representative. In each situation, you question the validity of the Form 2848.

In the first situation, the signature of one of the representatives is a stamped signature. (In the Form 2848 examples forwarded to this office for this fact situation, there are 2 representatives named and only 1 of the representatives uses a stamped signature). The facts of the second situation involve the taxpayer executing a Form 2848 naming a certain representative. Then, approximately seven (7) months later, the same Form 2848 is apparently altered by "whiting out" the prior representative and having a new representative execute the Form 2848. The third situation you question is the language added on the Form 2848 in question 5 of Part I which states that "[t]he power to substitute another representative or delegate authority is specifically granted." It is our understanding most, if not all, Forms 2848 you receive naming an employee of [REDACTED] as the representative contain this language. Your concerns relative to the substitution of representatives is that the Revenue Officer assigned the case may receive a telephone call and/or correspondence from any employee of [REDACTED] and the Revenue Officer will not, at any given time, know who is representing the taxpayer.

ANALYSIS

As set forth in more detail below, we believe your concerns relative to the Forms 2848 in the three (3) fact

situations outlined above are justified. Initially, we will address the Form 2848 which does not contain an original signature for the representative. Before an individual can represent a taxpayer before the Internal Revenue Service, he or she is required to execute a written declaration stating that

- (1) I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority;
- (2) I am aware of the regulations contained in Treasury Department Circular 230 (31 C.F.R., part 10), concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others);
- (3) I am authorized to represent the taxpayer(s) identified in the power of attorney; and
- (4) I am an individual described in § 601.502(b).

Treas. Reg. § 601.502(c). The above declaration is found in Part II of the Form 2848. Treasury Regulation Section 601.502(c) makes it clear that "[i]f an individual is unable to make such a declaration, he/she may not engage in representation of a taxpayer before the Internal Revenue Service." Without an original signature on the part of the representative, the representative can not be said to have provided the required declaration. Thus, if the representative has not actually signed the Form 2848, he or she may not represent the taxpayer before the Internal Revenue Service.

We note that the Form 2848 examples forwarded to this office for this situation name two (2) representatives and only one (1) of the representatives uses a stamped signature. If there are two (2) representatives and only one (1) uses a stamped signature, we believe the Form 2848 is still valid with respect to the representative who actually signed the Form 2848. If there are two (2) representatives named and only one (1) of the representatives can not represent the taxpayer, we believe you should advise the taxpayer that your office will

recognize only the representative who actually signed the Form 2848. If the taxpayer desires to submit a new Form 2848 containing original signatures for all named representatives, he or she is free to do so.

With respect to the second and third situations presented, we believe they are somewhat related. Ignoring for these purposes the possible fraud when the signature of one representative was altered so as to replace it with another representative,¹ we submit that the second situation, like the third situation, involves the issue of the substitution of the representative. This being the case, we will address the second and third situations as involving a question of the requirements for substituting or delegating to a representative when the Form 2848 specifically permits substitution and/or delegation.

There is no question that the taxpayer can specifically authorize his representative to substitute or delegate authority to another representative. The examples of the Forms 2848 you forwarded to this office all contain the statement in question 5 of Part I that "[t]he power to substitute another representative or delegate authority is specifically granted." Even with this specific authority, however, before the representative named in the Form 2848 can effectuate the substitution, he or she must file certain documents with the Internal Revenue Service. Treasury Regulation Section 601.505(b)(2) sets forth the applicable documents. As relevant herein, Treas. Reg. § 601.505(b)(2) provides that the representative must file a Notice of Substitution or Delegation which is defined as

a statement signed by the recognized representative appointed under the power of attorney. The statement must contain the name and mailing address of the new recognized representative and, if more than one individual is to represent the taxpayer in the matter, a designation of which recognized representative is to receive notices and other written communications.

¹ We do not know if the taxpayers in the example forwarded to this office knew that the Form 2848 they signed was altered. We can only assume that they did not or they would have simply executed another Form 2848 naming the new representative.

Treas. Reg. § 601.505(b)(2)(i). Additionally, the representative must file a "written declaration which is made by the new representative as required by § 601.502(c)". Treas. Reg. § 601.505(b)(2)(ii). (The written declaration required by Treas. Reg. § 601.502(c) is the declaration found in Part II of the Form 2848). Thus, unless and until the representative files a Notice of Substitution or Delegation specifically naming the new representative and the newly named representative signs the written declaration as set forth in Part II of the Form 2848, there can be no substitution or delegation of the representative.

To the extent the employees of [REDACTED] believe that the authority granted to them by the taxpayer to substitute another representative or delegate authority to another representative allows them to simply "pass" the taxpayer's file from one [REDACTED] employee to another [REDACTED] employee, they are incorrect. Unless and until the requirements of Treas. Reg. § 601.505(b)(2) are followed, there can be no substitution or delegation. Moreover, once the representative has properly substituted in accordance with Treas. Reg. § 601.505(b)(2), "only" the newly recognized representative will be considered the taxpayer's representative." Treas. Reg. § 601.501(b)(14). (Emphasis supplied). If, on the other hand, the representative has properly delegated (as opposed to substituted) in accordance with Treas. Reg. § 601.505(b)(2), "both the original recognized representative and the recognized representative to whom a delegation is made will be recognized to represent the taxpayer." Treas. Reg. § 601.501(b)(5).

In conclusion, we are of the opinion that the Form 2848 must contain an original signature of the representative to be valid and that the requirements of Treas. Reg. § 601.505(b)(2) must be complied with before one representative can be substituted for another representative. If you have any questions or want to discuss this further, please do not hesitate to contact the undersigned at Ext. 5462. We also attach herewith a Client

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Survey Form which we request that you complete and return to this office.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

JEFF P. EHRLICH
Area Counsel (SB/SE:Area 3)

By: 

REBECCA DANCE HARRIS
Attorney (SB/SE)

Attachment:
Client Survey Form